IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Prema alias Prem Singh Vs. State of Rajasthan

S.B.CRIMINAL JAIL APPEAL NO.738/2001
against the judgment dt.20.9.2001 passed by
the Special Judge, NDPS Cases, Bhilwara,
in Sessions Case No.32/2000.

Date of Judgment: July 19, 2007

P R E S E N T

HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.Rajesh Bhati, Amicus Curiae.
Mr.V.R.Mehta, Public Prosecutor.

REPORTABLE BY THE COURT:

1. This is an appeal against the judgment of learned Special Judge, NDPS Act Cases, Bhilwara, dated 20.9.2001 whereby he convicted the accused appellant Prema alias Prem Singh for the offence u/s.8/15 of the Narcotic Drugs & Psychotropic Substances Act, 1985, hereinafter referred-to as "the Act of 1985" and sentenced him to ten years' rigorous imprisonment and to pay a fine of Rs.one lac and in default, to further undergo

six months' additional simple imprisonment.

2. The charge against the accused was that on 18.5.2000 at 3 P.M., the Checking Party headed by S.H.O., Police Station Phulia Kala, District Ajmer, recovered 35 kgs. of poppy straw near Balapura, which he was carrying in “bags” and “katta” on his vehicle TVS Champ No.RJ14-11M-7895 for which he was having no valid permit or licence. After completing the formalities of taking sample etc., accused was challaned under Section 8/15 of the Act of 1985. He was charged by the learned Special Judge accordingly to which he pleaded not guilty. The prosecution examined 16 witnesses. The statement of accused was recorded under Section 313 CrPC. He led no defence. After hearing the arguments, the learned Special Judge convicted & sentenced the accused in the manner as aforesaid.

3. Learned Amicus Curiae has not questioned the legality of conviction recorded by the learned Special Judge under Sec.8/15 of the Act of 1985 on account of accused being found in possession of 35 kgs. of poppy straw but while relying upon the decision of the Hon'ble Supreme court in Basheer v. State of Kerala reported in 2004 Cri.L.J.1418, he has submitted that after the amendment of the principal Act of 1985 with effect from 2.10.2001, the minimum sentence awarded to the accused for

ten years' R.I. and a fine of Rs.one lac is very much excessive because the accused is a poor man belonging to agriculturist Community and was a simple carrier of the contraband goods and, therefore, he should be awarded lesser punishment in the light of applicability of the amended provision, which is covered in the present appeal, filed after the Amending Act of 2001.

4. On the contrary, learned Public Prosecutor has justified the period of sentence awarded to the accused by the learned Special Judge and has submitted that the amended provisions of the Act of 2001 are not applicable in the present case because the trial was concluded and the judgment was pronounced on 20.9.2001 i.e. prior to the applicability of the amendment from 2.10.2001.

5. The main controversy involved in this appeal is whether the amended provisions in the Act of 1985, which have been made applicable with effect from 2.10.2001, are applicable in the present case or not? The amended provision is contained in Section 41 of the Narcotic Drugs & Psychotropic Substances (Amendment) Act, 2001, hereinafter referred-to as "the Amending Act of 2001", the relevant extract is as under:

> "41. Application of this Act to pending cases.- (1) Notwithstanding anything contained in sub-section (2) of Section 1, all cases pending before the Courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence:
>
> Provided that nothing in this section shall apply to cases pending in appeal.
>
> (2) xxxxx."

6. A bare reading of the above Sub-section (1) of Section 41 of the Amending Act of 2001 shows that two classes of cases shall be covered by the Amending provision. They are; (i) the cases pending before the courts and (ii) the cases under investigation. The plain and simple meaning of it is that the cases under trial and investigation shall be disposed-of in accordance with the provisions of the Amending Act of 2001 and any person found guilty prior to this amendment, shall be punished in accordance with the provisions of the Amending Act. However, there is a proviso to this Sub-section which says that the cases in which the appeal is pending, the Amending provision shall not be made applicable.

7. The Constitutional validity of this proviso was challenged in

the various High Courts and it was declared to be violative of Article 14 of the Constitution. These Cases are of Ram Singh v. State of Haryana reported in 2003(1) EFR 444 and of Ramesh v. State of M.P. Reported in 2004 Cri.L.J. 62. However, while elaborately discussing on the scope of Article 20(1) and Article 14 of the Constitution, their lordships of the Supreme Court in Basheer's case (supra) held that decisions of the Punjab & Haryana High Court in Ram Singh's case (supra) and of M.P.High Court in Ramesh's case (supra) declaring proviso to Section 41 (1) of the Act of 2001 to be hit by Article 14 of the Constitution, is erroneous on the constitutional issue and these two judgments were over-ruled vide para 24 of the said judgment.

8. If this present appeal is looked into in the light of the judgment in Basheer's case (supra) relied upon by the learned Amicus Curiae, it has some dissimilarity with the appeals, which were pending before the Hon'ble Supreme Court. Because those appeals in Basheer's case were the one in which the accused were convicted and their appeals were pending prior to the Amending Act of 2001, whereas in the present appeal, the conviction was recorded and the accused was sentenced to the minimum sentence of ten years' R.I. under the Act of 1985 on 20.9.2001 i.e. twelve days prior to the amendment and no appeal was pending against this judgment when the Amending

Act came into force on 2.10.2001. This jail Appeal was forwarded by the Superintendent, Central Jail on 4.10.2001 which was received in this Court on 15.10.2001 and registered on 20.10.2001. Thus, the present Appeal cannot be said to be covered under the proviso to Sub Section (1) of Section 41 of the Amending Act of 2001. When the appeal was not pending on the date of amendment and the appellant was convicted prior to the Amendment, then in such cases, whether the provisions of the Amending Act of 2001 will be applicable or not, has been discussed as an exceptional situation in para 23 of the judgment in Basheer's case (supra) by the Hon'ble Supreme Court. While declaring the Amendment as not detrimental to the accused by virtue of rule against post facto legislation contained in Article 20 (1) of the Constitution and non-applicability of the Act for pending appeals, as not violative of Article 14 of the Constitution because of precluding the possible contingency of reopening concluded trials, it was observed as under:

> "There is one exceptional situation, however, which may produce an anomalous result. If the trial had just concluded before 2.10.2001, but the appeal is filed after 2.10.2001, it cannot be said that the appeal was pending as on the date of the coming into force of the Amending Act, and the amendment would be applicable even in such cases."

9. The facts of the present appeal are fully covered with the

observations made by their lordships of the Hon'ble Supreme Court as referred to above because in the present case, the sentence by the trial Judge was passed on 20.9.2001 when the Amending Act was not in force but there was no pending appeal when the Amendment was made with effect from 2.10.2001 but it was filed thereafter.

10. When a legislation is silent about its applicability in a given case, particularly in criminal trial, the courts should adhere to the protection given to an accused by virtue of Clause (1) of Articles 20 & 21 of the Constitution. Article 20(1) of the Constitution opens with the words that No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. As observed by the Hon'ble Supreme Court in Basheer's case, this provision is a rule against post facto legislation. Likewise, the spirit of Article 21 of the Constitution is that no person shall be deprived of life & liberty save by the procedure established by the law. When the law is silent or it gives such interpretation, which touches the liberty of a citizen, the Courts should give such meaning to the Statute which is beneficial to the accused.

11. When a legislation is brought into existence, it is for the benefit of the people and the Court should give such interpretation which is not only beneficial to the person who takes benefit out of it but it should also be in consonance with the Statement of Objects and Reasons given in the Amending provisions. The Statement of Objects and Reasons appended to the Bill is as follows:

> **"Statement of Objects and Reasons:-** Amendment Act 9 of 2001:- The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of minimum ten years rigorous imprisonment which may extend upto twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformative approach towards addicts. In view of the general delay in trial, it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires rationalisation of the sentence structure provided under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences."

12. This Statement of Objects & Reasons itself is beneficial for the interest of the accused who are languished in jail for a considerable time on account of being minimum ten years punishment in contraband drugs and are denied right of bail as

against those who are indulged in large scale quantity of drugs trafficking. This Amendment provides rationalization in the matter of grant of bail as well as in the matter of awarding sentence by distinguishing the narcotic drugs & psychotropic substances in three categories viz; (i) small, (ii) commercial and (iii) in between small & commercial. If the legislation is silent on a particular issue which is apparently in the present case about applicability of the Amending Act in case where sentence has been passed prior to Amendment and no appeal has been filed after the Amendment, then the Court should give that interpretation which is in furtherance of the intention of the legislature given under its preamble or Statement of Objects & Reasons. I am fortified with the observations made by the Hon'ble Supreme Court in Basheer's case (supra) regarding the case of the present nature where no appeal was pending on the date of Amendment and the sentence was passed prior to the Amendment.

13. In the present case, the recovery is of 35 kgs. of poppy straw which is neither small quantity nor commercial quantity, because under Item No.110 of the table given under the notification, the small quantity specified is 1000gm. i.e. 1kg. and commercial quantity is shown to be 50 kg. If this table is looked into in the light of the present case, which is of 35 kgs. of poppy

straw, in such cases, the punishment provided for under Clause (b) of Section 15 runs as under:

> "15.(b) Where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees."

14. It reveals from the impugned judgment and the manner in which the recovery has been made that the accused is not a big trader in narcotic drugs and psychotropic substances but seems to be a small carrier from whom 35 kgs. of poppy straw has been recovered from his TVS Champ from the nearby village and he belongs to a poor agriculturist family. Therefore, the punishment of ten years' R.I. and a fine of Rs.one lakh will be much excessive. As he has already been in jail for the last about seven years, the ends of justice will meet if he is sentenced to the period already undergone and the amount of fine is reduced, which seems to be much excessive looking to the facts & circumstances of the present case.

15. Consequently, this Jail appeal is allowed in part. While maintaining the conviction of the accused appellant Prema alias Prem Singh recorded u/s.8/15 of the Act of 1985, his sentence of ten years' R.I. is reduced to sentence already undergone and the

amount of fine of Rs.one lakh is reduced to Rs.10,000/- and in default of payment of fine, he will further undergo one month's imprisonment.

(DEO NARAYAN THANVI), J.

RANKAWAT JK, PS